

REMARKS

Responsive to the preliminary determination of lack of unity set forth in the outstanding Official Action, applicant hereby provisionally elects Group VIII, directed to the peptide with sequence SMAKEGV (SEQ ID NO: 8), with traverse.

Responsive to the election of species requirement, applicant hereby provisionally elects proline substituted in the N-terminal position and in the C-terminal position (i.e. claim 6), with traverse.

It is believed that claims 1-3, 6-9 and 11-24 are readable on the elected species.

The lack of unity determination set forth in the outstanding Official Action is improper on multiple bases and must be withdrawn.

Determination of the lack of unity is possible only when the claims of a different group lack a "special technical feature" relative to another. In the present case, claim 1 is the independent claim and generic to all of the peptide sequences. Therefore, all of the claims share the same "special technical feature" and depend from generic claim 1.

Additionally, according to the Commissioner's Official Gazette Notice of October 17, 1996, as reflected in part in MPEP §1850, the U.S. Patent and Trademark Office should expressly waive any ability that might otherwise have to require restriction or to determine lack of unity, including during the

national phase, as among the first ten nucleotide sequences claimed in any national or PCT national phase application. Thus, applicant respectfully submits that the restriction to a single sequence is unwarranted.

Further, in applying the same legal standard with similar claims, the International Search Authority did not determine the unity invention as lacking. Thus, the Patent Office has the benefit of the search report, but fails to explain why a different legal conclusion was reached.

Applicant also respectfully submits that the separation of the peptide sequences in claim 1 into 46 different groups imposed in the Official Action is incorrect from a chemical point of view. It cannot be neglected that the peptide sequences actually belong to different groups, which share a common basis sequence. Therefore, at the very least, the groups should be as follows: Group I (SEQ ID NOS: 1-11 with a basis sequence of KEGV), Group II (SEQ ID NOS: 12-22 with a basis sequence of MDVF), Group III (SEQ ID NOS: 23-33 with a basis sequence of DVF), Group IV (SEQ ID NOS: 34-40 with a basis sequence GL) and Group V (SEQ ID NOS: 41-46 with a basis sequence of LS). In particular, applicant believes that Group I (SEQ ID NOS: 1-11) is directed to all peptides showing the basis sequence of KEGV, and this Group I would be a more appropriate election based on the lack of unity determination imposed in the Official Action.

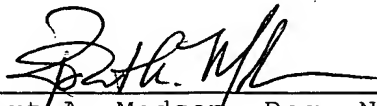
With respect to election of a proline substitution species, applicant respectfully submits that claim 1 is generic and therefore shares the same technical feature as the four proline substitution species. Furthermore, the proline substitution does not change anything in the formal character of the elected peptide sequence. Thus, applicant believes that the election of species requirement is unwarranted.

In light of the above discussion, it is believed to be apparent that the lack of unity determination and election of species requirement set forth in the outstanding Official action are improper and must be withdrawn. At the very least, favorable action on the merits of claims 1-24 with respect to SEQ ID NO. 1-11 is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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